

FALK LAW FIRM, LLC.

James K. Falk

(843) 606-6007

(843) 972-9005 Fax Admitted to practice: KY(1984) S.C. (2010) jfalklaw@gmail.com

July 30, 2018

RECEIVED

AUG 03 2018

Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

S.C. SUPREME COURT

Re: James A Wilson v State of South Carolina, 2017-CP-26-00597

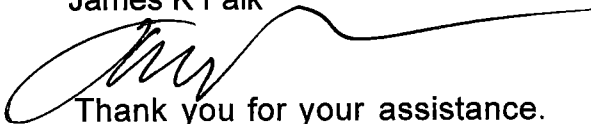
Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal and Grant of Appeal pursuant to White v State, in the above Horry County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,

James K Falk



Thank you for your assistance.

Cc: Johnny James Jr. Esq. James A Wilson 339674.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

AUG 03 2018

S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Honorable Larry B Hyman, Circuit Judge

Case No.: 2017-CP-26-0359

James A Wilson 339674.....PETITIONER

V.

State of South Carolina.....RESPONDENT

CERTIFICATE OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Johnny James Jr., Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this July 30, 2018.



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

RECEIVED

AUG 03 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM Horry COUNTY
Court of Common Pleas
Honorable Larry B Hyman Circuit Judge

Case No.: 2017-CP-26-0597

James A Wilson 339674.....Petitioner

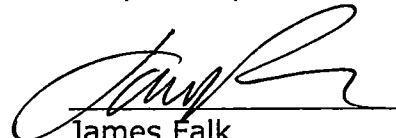
v.

State of South Carolina.....Respondent

NOTICE OF APPEAL

The Petitioner James A Wilson appeals the Honorable Larry B Hyman’s July 17, 2018 Order Granting Belated Appellate Review Pursuant to White v State and Denying All Remaining Claims. Undersigned counsel received notice of entry of the order on July 30, 2018. A copy of the order on appeal is attached to this notice.

Respectfully submitted



James Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402
Attorney for Petitioner

July 30, 2018

Johnny James Jr. Esq.
S.C. Attorney General’s Office
PO Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	
James A. Wilson,)	Case No.: 2017-CP-26-00597
S.C.D.C. No. 339674,)	
)	
Applicant,)	
)	ORDER OF DISMISSAL;
v.)	GRANT OF RELIEF PURSUANT TO
)	<u>WHITE V. STATE</u>
State of South Carolina,)	
)	
Respondent.)	

2018 JUL 20 PM 1:35
 HERRIN, ELVIS
 CLERK OF COURT
 HORRY COUNTY, SC
 HORRY COUNTY

This matter comes before the Court by way of an application for post-conviction relief filed by James A. Wilson (“Applicant”) on February 1, 2017. Respondent made its return on or about December 13, 2017. The Court convened an evidentiary hearing into the matter on Monday, May 21, 2018, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by James K. Falk, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s trial counsel, Ralph J. Wilson, Sr., Esq. (“Counsel”) also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant’s direct appeal records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the September 2015 term of the Horry County Grand Jury for murder (2015-GS-26-04026), and possession of a

weapon during the commission of a violent crime (2015-GS-26-04027). Ralph J. Wilson, Sr., Esq. represented Applicant. George Debusk, Esq., and Seth Oskins, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On June 27, 2016, Applicant proceeded to trial before the Honorable Steven H. John and a jury. The jury found Applicant guilty of the lesser-included offense of voluntary manslaughter, and as indicted for the weapon charge on June 29, 2016. Judge John sentenced Applicant to imprisonment for concurrent terms of 27 years for voluntary manslaughter, and 5 years for the weapon charge. Applicant did not appeal his conviction or sentence.

Present Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Trial counsel provided ineffective assistance by failing to file a Notice of Appeal on behalf of Applicant where Applicant asked counsel to appeal and counsel should reasonably have known that Applicant would want to appeal."
 - a. "During trial, Applicant told counsel that if the jury found him guilty, he was going to appeal all the way to the Supreme Court because the incident was an accident and he did not intentionally shoot the victim. Counsel however did not respond."
 - b. "After trial, counsel spoke with Applicant and his parents about an appeal whereas he informed them that he did not see where there was anything to appeal. Applicant again stated he wanted an appeal, but counsel reiterated that there was nothing to appeal."
 - c. "Counsel unreasonably failed to appeal and turn the case over to the Office of Appellate Defense after Applicant had shown a clear desire to appeal and where counsel either knew, or reasonably should have known, that Applicant wanted to appeal."
 - d. "Applicant was prejudiced in that he was deprived of his vital interests in having the assistance of someone trained and experienced in appellate practice and procedure to ensure that Applicant had the opportunity to have a higher court review his unlawful conviction and sentence through the state appellate process."

2. "Trial counsel provided ineffective assistance in failing to adequately inform Applicant and the court of the existence of a potential or actual conflict of interest where counsel and his son, who is also a lawyer, are cousins to the victim and the son represented a state witness who testified against Applicant, prior to, and after the incident."
 - a. "Prior to trial, counsel told Applicant that the victim who died as a result of the incident for which Applicant was standing trial, was a cousin of defense counsel and he asked Applicant if that bothered Applicant and if he still wanted counsel to represent him."
 - b. "Applicant informed counsel that it did not bother him and that counsel could represent him since his parents had already hired him, however, Applicant did not understand the ramifications in that counsel did not explain anything as to why Applicant might not want counsel to represent him solely because the victim was his cousin and counsel failed to provide Applicant with all necessary information in which to make a reasoned and intelligent choice."
 - c. "Counsel had a duty to inform Applicant and the court of the existence of a potential or actual conflict of interest in that counsel and his son were relatives of the victim and counsel's son (also a lawyer) had represented a person who was a witness against the Applicant prior to and after the incident."
 - d. "Had counsel adequately explained to Applicant that there was a potential or actual conflict of interest at any time when counsel became aware of same, even during trial, Applicant would have asked counsel to take appropriate action to have counsel disqualified and moved for a replacement counsel or take other such action as necessary to ensure that Applicant was provided another attorney."
 - e. "Applicant was prejudiced in that among other things, counsel failed to advocate for Applicant in a manner that might be expected of attorneys in criminal matters."
3. "Trial counsel provided ineffective assistance in failing to object to the Solicitor's closing argument and ask for a curative instruction, where the Solicitor acted as a witness by arguing alleged facts that was not in evidence, which tended to bolster the credibility and false testimony of State witnesses, and where his argument was contradicted by testimony and other evidence, to clear prejudice of the Applicant."
 - a. "During closing arguments, the Solicitor improperly argued that the victim ducked so the bullet would miss her and that his why the bullet entered and existed the victim the way it did. This was improper because, among

other things, the State's witness testified that the victim never saw the gun and did not try to move out of the way of the bullet."

- b. "The Solicitor also argued that the bullet's trajectory (where it entered and exited the victim) showed that Wilson had unlawfully shot the victim. This was improper in that the only expert to testify regarding the trajectory of the bullet testified that it was not possible for the shooting to have occurred at an angle that placed the victim and the Defendant at a face to face angle as asserted by a State's witness and he said nothing of the victim ducking to avoid the bullet."
- c. "The bullet entered the victim's left breast area and exited through the right breast area, which is consistent with the testimony of Applicant, defense witnesses, and the expert witness. No testimony or other evidence was presented to insinuate or establish that the victim saw the gun and ducked to try to get out of the way of the bullet, or, that even if the victim did duck, that doing so could cause the bullet to enter and exit the victim the way it did and be consistent with an intentional shooting as opposed to an accidental shooting."
- d. "The Solicitor's closing argument was also improper in that it made it appear that he was a witness, he was not qualified in the area of ballistics or the trajectory of a bullet, and his closing argument tended to confuse the jury, bolster the credibility and false testimony of the state's witnesses whom the Solicitor knew were testifying falsely, and led the jury to believe that the Solicitor had knowledge of facts and evidence other than that presented in court."
- e. "Counsel unreasonably failed to object and ask for a curative instruction."
- f. "Applicant was prejudiced in that his defense was that of 'accident,' and his guilt or innocence hinged on whether the jury believed the State or Defense witnesses, as well as whether an expert was able to explain the ramifications of the bullets trajectory to the jury in terms that the jury could understand. However, the Solicitor's argument acted to bolster the credibility of the State's witnesses despite the Solicitor and the jury knowing that the State's witnesses were testifying falsely, improperly urged the jury to consider the argument as facts and evidence, and improperly urged the jury to believe that the Solicitor was an expert in the trajectory of a projectile to the extent that the jury disregarded substantial evidence showing that the shooting was an accident."
- g. "Applicant was also prejudiced in that but for counsel's failure to object to the Solicitor's improper argument and ask for a curative instruction, no reasonable juror would have voted to find Wilson guilty of voluntary manslaughter."

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCR; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

“[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at

689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

1. Failure to File a Notice of Appeal

Applicant alleges Counsel was ineffective in failing to file a notice of appeal. “All defendants who have been found guilty of a crime have a right to be informed of the possibility of appeal and the method for taking an appeal.” Frasier v. State, 306 S.C. 158, 161, 410 S.E.2d 572, 574 (1991) (citing Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989); White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974)). “In the absence of an intelligent waiver by the defendant,

counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967).” Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (quoting Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008)). Where an Applicant does not knowingly and voluntarily waive his right to an appeal, and where Counsel fails to either initiate that appeal or comply with Anders procedure, “White permits consideration of the full trial record on [an] issue in conjunction with appellate review of the PCR proceeding under an exception to the prohibition against appellate courts considering appeals in the absence of notice of direct appeal given and timely served.” Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)).

Respondent argued against Applicant’s demand for White relief at the evidentiary hearing, but subsequent to the hearing indicated to this Court its intent to concede the White claim. This Court finds the concession well taken, and the Court finds there is sufficient evidence to show Applicant did not knowingly and intelligently waive his right to a direct appeal from his conviction. Accordingly, Applicant is directed to petition the Supreme Court of South Carolina for review pursuant to White v. State.

2. Conflict of Interest

Applicant alleges Counsel was ineffective for failing to adequately inform him and the trial court of the existence of a conflict of interest. “To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object a trial must show an *actual* conflict of interest adversely affected his attorney’s performance.” Jordan v. State, 406 S.C. 443, 449, 752 S.E.2d 538, 541 (2013) (quoting Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001)). “The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a

criminal conviction.” Id. (quoting Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008)). An actual conflict of interest occurs:

when a defense attorney places himself in a situation inherently conducive to divided loyalties. . . . If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists. The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client.

Lomax, 379 S.C. at 101, 665 S.E.2d at 168 (quoting Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984)). “[U]ntil a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance.” Id. “However, a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice to obtain relief.” Id. (quoting Staggs v. State, 372 S.C. 549, 551-52, 643 S.E.2d 690, 692 (2007)). Conflicts of interest may be waived so long as such waiver is done knowingly, intelligently, and voluntarily. Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001).

At the evidentiary hearing, Applicant testified Counsel informed him of a potential conflict—namely that the victim was a cousin to Counsel. Applicant claimed he asked if his parents would get their money back if he relieved Counsel, to which Counsel reportedly said they would not get a refund. Applicant asserted Counsel never explained the concept of a conflict of interest to him, let alone its gravity, when Applicant waived the conflict. Applicant also testified Counsel’s son, Ralph J. Wilson, Jr., Esq., represented Kenneth Green, a witness against Applicant at trial, which created a conflict for Counsel.

Counsel testified he talked to Applicant about the potential conflict on February 23, 2016, at which time Applicant waived the issue. Counsel explained the victim was either a second or third cousin, and that there was no close relationship. Counsel noted he did not know the victim

any more than anybody else. Counsel denied ever having a discussion about a refund with Applicant. As to his son's representation of Green, Counsel testified he and his son ceased joint practice in May 2015, and that he had not known his son represented Green.

The Court finds Applicant has not met his burden of showing Counsel was ineffective. First, it is uncontested Applicant was informed of and waived any potential conflict of interest presented by Counsel's remote relation to the victim. Applicant presented no evidence to this Court to show that Counsel withheld some aspect of the conflict or misadvised him that would have rendered his waiver unknowing or unintelligent, but only offered a vague assertion that he was not supplied all necessary information to make an informed choice. Second, there is no evidence before this Court of any actual conflict. To the contrary, Counsel's credible testimony made clear there was no meaningful relationship between himself and the victim, or even sufficient familiarity for him to identify the victim, let alone any representation or relationship sufficient to divide Counsel's loyalty. As to the representation of Green by Counsel's son, the only evidence before this Court is that Counsel and his son were not engaged in any joint practice during the course of Counsel's representation of Applicant, or even operating out of the same premises. Attorneys in the State of South Carolina are not obliged to keep tabs on who their practicing relatives represent. In any event, as was the case with the relationship to the victim, there is no evidence before this court to establish an actual conflict arising out of Ralph Jr.'s representation of Green. Accordingly, this Court finds Applicant has not met his burden of showing an actual conflict of interest, and his request for relief by way of this allegation is **DENIED.**

3. Failure to Object to Solicitor's Closing Argument

Applicant alleges Counsel was ineffective in failing to object to the State's closing argument that the victim must have ducked during the fatal confrontation. "A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." Brown v. State, 383 S.C. 506, 515, 680 S.E.2d 909, 914 (2009) (quoting Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004)). "The argument must not be calculated to arouse the juror's passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom." Id. "On appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt." Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). "Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002).

At trial, forensic pathologist Nicholas Batalis testified as an expert witness on behalf of the State. (Tr. 252-278). Dr. Batalis determined the bullet that killed the victim was fired from a distance between two to four feet away, entered through her left side near the armpit, traveled downwards between two ribs on her left side, then struck the aorta, pancreas, stomach, right kidney, right adrenal gland, passed through the right side of the diaphragm, and then exited the right posterior side of the chest. (Tr. 257-260). On cross-examination, Counsel repeatedly challenged Dr. Batalis on precisely which arrangement of persons was feasible given the

trajectory of the bullet. (Tr. 267-269). Dr. Batalis explained there were multiple ways in which the bullet's trajectory could have been effectuated:

I can't testify to every possible scenario. I can say I know that the pathway that the gun – I know the relationship of the gun to the body when it was fired, and so, I mean, *bodies could be in motion*, but given the circumstance where two people are directly facing each other, you know, one way would be like that. It is hard to imagine another way to have the left-to-right pathway if they are facing like this. A slight turn like that (indicates) would change everything.

(Tr. 269, ll. 3-12) (emphasis added). Counsel sought to clarify and Dr. Batalis again noted the possibility of the victim's movement:

Q. I asked this once before, and I think you gave me an answer and I think I understand what you are saying, but I want to be clear. When we talk about the shooting and how it happened, I asked you specifically if the two people facing each other, three or four feet away from each other, they are facing each other and a gun is pulled out, the arm is lifted and the gun is fired, is there a way to have made that particular shot like that?

A. Yes. Again, if the arm was out, not straight out, but if it was up at an angle, or *if the decedent sees the gun presented and would turn*, that would be another way in which it could happen.

(Tr. 273, ll. 7-19) (emphasis added). In closing, Counsel argued that the trajectory determined by Dr. Batalis was mutually exclusive with the face-to-face confrontation and murder by Applicant claimed by the State's witnesses. (Tr. 384, ll. 3-22; Tr. 387, ll. 4-25). The State, in its own closing, argued its own theory of what occurred:

You heard the pathologist testify that arm had to be against the chest for that stippling to be there. If that arm was raised like this, the stippling wouldn't have been (indicates), instead it was on the arm, because that is what Dr. Batalis testified. Her arm had to be down when she was shot. He also told you how it probably happened. Trajectory down around here (indicates), going across the body and slightly down. He didn't have to come across and shoot like this. *When someone pulls a gun, what is the first reaction? You'll duck.* If Nigeria McDonald ducked just a little bit, it goes right back to where the person standing pointing a gun at. It is not difficult. She sees the gun pointed. What is her first

reaction? I'm in trouble, she ducks, and that's where she's hit. It lines up. With her arm down by her side, and she ducks, and that is where the stippling is. Arm is raised, it would be down here under her arm, not up here under the arm.

(Tr. 395, ll. 2-20) (emphasis added).

At the evidentiary hearing, Counsel testified he did not object because he believed the State was arguing reasonable inferences based on the evidence in the record. Counsel noted there was conflicting testimony "all over the place" from witnesses. Refreshed and confronted with the testimony of Dr. Batalis and the State's closing, Counsel reaffirmed that the pathologist indicated the shooting could have happened in more than one way, and that the State was entitled to use the facts in the record to develop and present its theory of the case.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. To the contrary, Counsel's judgment is entirely accurate, and based upon review of the testimony at trial, the Court finds the State's theory-in-closing that the victim instinctively moved upon seeing Applicant's gun is based upon reasonable inferences drawn from the testimony of Dr. Batalis. As such, there was no basis for Counsel to object. Accordingly, Applicant has failed to meet his burden, and his request for relief by way of this allegation is **DENIED**.

[Conclusion and signature on following page]

III. CONCLUSION

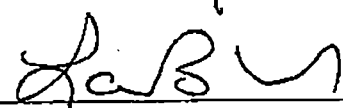
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

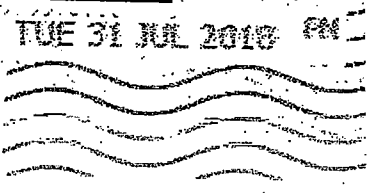
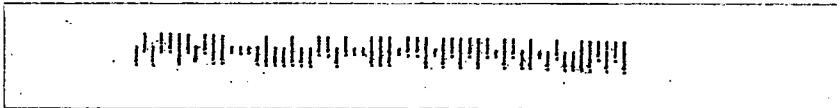
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice;
2. Applicant is directed to petition for writ of certiorari in the Supreme Court of South Carolina in order to effectuate relief pursuant to White v. State; and
3. Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 17 day of July, 2018.



LARRY B. HYMAN, JR.
Presiding Judge
Fifteenth Judicial Circuit

Cowley, South Carolina



FALK LAW FIRM
PO Box 1058
Charleston, SC 29402

Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211